

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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date: February 22, 2010

to: R.B. McArthur
(Chief, Excise Tax Program)

from: Frank Boland
(Chief, CC:PSI:7)

subject: Request for Counsel Opinion on Interpretation of IRC 6725

This responds to your December 8, 2009, memorandum in which you ask if a person that filed a late Form 720-TO, Terminal Operator Report, or Form 720-CS, Carrier Summary Report, that was incomplete or contained incorrect information could be liable in the same period for the penalties listed in both §§6725(b)(1) and 6725(b)(2) of the Internal Revenue Code. In the context of §6725, a person would be a terminal operator or a bulk transport carrier.

Section 6725(a) provides that in the case of each failure described in § 6725 (b) by any person with respect to a vessel or facility, such person shall pay a penalty of \$10,000 in addition to tax (if any).

The failures described in § 6725(b) are --- (1) any failure to make a report under §4101(d) on or before the date prescribed therefor; and (2) any failure to include all of the information required to be shown on such report or to include incorrect information.

Section 6725(c) provides that no penalty is imposed under § 6725 for any failure that is due to reasonable cause.

The statutory language in §6725 (a) refers to “each” failure. The language “each failure” in §6725(a) can be read as every failure; the language “and” connecting §§6725(b)(1) and (2) can be read as “also” or “in addition to”. This supports the application of the two penalties to a report that is both late and incorrect or incomplete. Therefore, if a person files a Form 720-TO or Form 720-CS after the due date and that

form does not include all the required information or includes incorrect information, the person may be liable for the penalty in §6725(b)(1) and the penalty in §6725(b)(2) in the absence of reasonable cause.

This document may not be used or cited as precedent.

If you have any questions or comments regarding this memorandum, please contact Celia Gabrysh at (202) 622-4015.